IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.11.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT APPEAL Nos.1858, 1859 of 2001and 1624 of 2002

W.A.No.1858, 1859 of 2001

N. Manodevi .. Appellant in
WA.Nos.1858 & 1859/2001.

vs.

1. Daisey Bai

2. The General Manager (T.N.S.O)
Marketing Division
Indian Oil Corporation Ltd.
Indian Oil No.IV Level
139 Nungambakkam High Road
Chennai 600 034.

3. Senior Area Manager
Indane Area Office
2, Race Course Road
Chokkikulam
Madurai 625 002.

4. Dealer Selection Board (Madurai)
rep. by its Member Secretary
2, Race Course Road
Madurai 625 002. .. Respondents in
WA.Nos.1858 & 1859/2001.

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W.A.No.1624 of 2002:

1. The General Manager (T.N.S.O)
Marketing Division
Indian Oil Corporation Ltd.
Indian Oil No.IV Level
139 Nungambakkam High Road
Chennai 600 034.
2. Senior Area Manager
Indane Area Office
2, Race Course Road
Chokkukulam, Madurai 625 002.

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3. Dealer Selection Board (Madurai)
rep. by its Member Secretary
2, Race Course Road
Madurai 625 002. .. Appellants

vs.

1. Daisey Bai

2. N. Manodevi .. Respondents

Writ Appeals filed under Clause 15 of the Letters Patent against the order of the learned Judge Mr. Justice P. Shanmugam, dated 14.08.2001 made in W.P.No.4948 of 2001

W.A.No.1858/01 and 1624 of 2002

Petitions filed under Article 226 of the Cosntitution of India to issue writ of certiorarified Mandamus calling for the records relating to the order in T.N.L./S/604, dated 8.12.2000 on the file of General Manager (T.N.S.O) Marketing Division Indian Oil Corporation Limited, Indian Oil No.IV, Leavel, No.139 Nungambakkam High Road, Chennai-600 034 (The First respondent herein) and to quash the same asnd direct the first respondent to Award the LPG Distributionship to the PEtitioner at Nithiraivillai (Rural) Kanyakumari Disitrict under open (Women) category).

W.A.No.1859 of 2001 :- Writ Appeal filed under Clause 15 of the Letters patent against the order of this Court dated 5.9.1991 passed in Review Application No.82/2001 may be pleased to stay the order passed in w.P.4948/01 filed under Article 226 of the Constitution of India to issue writ of Certioraified Mandamusto calling for the records relating to the order in T.N.L./S/604 dated 8.12.2000 on the file of General Manager (T.N.S.O_ marketing Division, Indian oil Corporation Ltd., Indian Oil No.IV, Leavel, No.139 Nungambakkam High Road, Chennai-600 034 (The First respondent herein) and to quash the same and direct the first respondent to award the L.P.G. distributionship to the petitioenr at Nithitaivillai (Rural) Kannyakumari District and under open (women) Category.

Mr. V. Prakash, senior counsel for Mr. K. Balasubramanian for the appellant in WA.Nos.1858 and 1859/01 and for the second respondent in W.A.No.1624 of 2002.

Mr. P.N. Radhakrishnan, for appellants in WA.No.1624 of 2002 and for the respondents 2 to 4 in WA.Nos.1858 & 1859 of 2001.

No appearance of R.1 in all the appeals.

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COMMON JUDGMENT

(Judgment of the Court was delivered by
P. Sathasivam,J.)

The 4th respondent in W.P.No.4948 of 2001, aggrieved by the order dated 14.08.2001 setting aside the order awarding LPG Distributorship in her favour at Nithiraivillai Village (Rural), Kanyakumari District under Open (Women) category, has filed W.A.No.1858 of 2001. Against the dismissal of her Review Application No.82 of 2001 dated 05.09.2001, she also preferred W.A.No.1859 of 2001. Against the order dated 14.08.2001, in W.P.No.4948 of 2001, the official respondents, viz., General Manager, Marketing Division, Senior Area Manager, Indane Area Office and the Dealer Selection Board (Madurai) preferred W.A.No.1624 of 2002.

2. Since all three appeals relate to the same issue, they are being disposed of by the following common order.

3. For convenience, we shall refer the parties as arrayed in the writ petition.

4. The case of the writ petitioner is briefly stated hereunder:

The petitioner by name Daisey Bai, aggrieved by the order dated 08.12.2000 of the General Manager (T.N.S.O.), Marketing Division, Indian Oil Corporation, Chennai 34, filed the writ petition, viz., WP.No.4948 of 2001, to quash the same and as a consequential relief, to direct him to award LPG distributorship to her for Nithiraivillai Village (Rural), Kanyakumari District under Open (Women) Category. According to the petitioner, the first respondent had proposed to appoint Indane LPG Distributors in the State of Tamil Nadu and one among the locations was Nithiraivillai Village at Kanyakumari District. Though it was Open Category, it was reserved for women. The petitioner passed SSLC examination; aged about 57 years and a native of Kanyakumari District. After making necessary payment of Rs.500/- towards the cost of application and after complying with all the formalities, the petitioner submitted her application on 15.07.2000, i.e., within the time prescribed. She was called for interview by the Dealer Selection Board on 20.11.2000 and she attended the interview promptly. She was able to answer all the questions and very much confident that she would be selected. However, she did not receive any information and on her verification she came to know that one N.Manodevi, 4th respondent in the writ petition and other two women, by name, K. Krishnammal and B. Vijayalakshmi had been short-listed. In the writ petition, the petitioner raised various grounds disputing correctness of the impugned order selecting the 4th respondent.

5 The 4th respondent, viz., N.Manodevi filed a counter affidavit disputing the averments made by the writ petitioner. According to her, she was one of the short-listed candidates by virtue of the orders dated 21.11.2000 and subsequently selected and

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issued the letter of intend on 8.12.2000. She had undergone a training programme conducted by the respondents 1 to 3 at Chennai from 06.02.2001 to 13.02.2001. She obtained No Objection Certificate from the Local Authority, planning permission, etc. She also completed the construction of godown in strict compliance of the instructions of the Indian Oil Corporation. She is an Engineering Graduate in Instrumentation and Control Engineering from Bharathidasan University. She is also an unemployed graduate looking for self-employment and native of Kanyakumari District. It is also stated that even as per the petitioner's application, the entire operation would be done by her brother and son, if allotted, hence, any allotment to the petitioner would be an allotment in her name, but being operated by somebody else, which aspect has rightly gone into by the respondents in rejecting the case of the petitioner.

6. On behalf of Indian Oil Corporation (in short "IOC"), the Manager (Law) has filed a counter affidavit stating that the writ petition is not maintainable. It is stated that the petitioner was called for interview because she satisfied the minimum qualifications required for attending the interview, it would not confer any right or assurance for the ultimate selection to appoint her as a Dealer in that area. Though she was called for interview, she did not pass the interview to proceed to the stage II of the interview for selection. Therefore, she is not entitled to claim any priority over the short-listed candidates, much less the 4th respondent. The rejection of the petitioner is neither arbitrary, nor discriminatory. In view of the fact that the 4th respondent has already completed the construction of godown and obtained explosive licence and she is awaiting orders from IOC for commissioning Distributorship, the petition is liable to be dismissed.

7. The 4th respondent has filed a additional counter affidavit reiterating her earlier stand.

8. Based on the above pleadings, the learned single Judge, after finding that there is no transparency in the selection, allowed the writ petition and set aside the selection made in favour of the 4th respondent and directed the respondents to consider the case of the writ petitioner for selection, if she satisfies other requirements. Review petition filed by 4th respondent was dismissed by the learned Judge. Questioning the said orders, the above three appeals have been filed.

9. Heard Mr. V. Prakash, learned senior counsel and Mr. P.N. Radhakrishnan. The writ petitioner, who is shown as first respondent in all the writ appeals, though received notice, has not chosen to contest the appeals by engaging a counsel.

10. Mr. V. Prakash, learned senior counsel for the appellant in WA.Nos.1858 and 1859 of 2001 and Mr. P.N. Radhakrishnan, learned counsel for the appellant in W.A.No.1624 of 2002, at the foremost, pointed out that the learned Judge proceeded on the basis that the writ petitioner (first respondent herein) had the minimum qualification, viz., Matriculation or equivalent and

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she was 57 years old. It is also pointed out that the learned Judge accepted the averments made by the writ petitioner as true and decided in her favour without further verification. As rightly pointed out, except her assertion in the affidavit, the writ petitioner has not substantiated her case by producing relevant materials. In other words, she has not placed documentary evidence in respect of her claim. In fact, the 4th respondent and the appellant in W.A.Nos.1858 and 1859 of 2001, filed Review Application, highlighting the fraud played by the writ petitioner/first respondent, the learned Judge ought to have considered the same. As rightly pointed out, the minimum age and the minimum educational qualification have not been substantiated by the writ petitioner by placing documentary evidence, more particularly, when the 4th respondent has placed documentary evidence in support of her claim.

11. The learned Judge allowed the writ petition holding that the writ petitioner being a native of Nithiraivillai Village, Kanyakumari District is entitled to priority. The notification / advertisement issued by IOC clearly shows that no such priority is mentioned. It is not in dispute that the 4th respondent also belongs to Kanyakumari District.

12. Another infirmity pointed out in the order of the learned Judge is that he proceeded that widows having minimum eligibility criteria must be given priority over other candidates and by holding so, the learned Judge virtually made the dealership reserved for widows, whereas the same is not the policy or criterion as seen in the advertisement. In this regard, it is useful to refer the terminology used by the IOC in the advertisement calling for applications for Dealership, viz., Dealership is reserved for Women. In Clause 8-B, it is provided, "Other things being equal, unmarried women above 40 years of age without earning parents and widows will be given priority over others". Referring to the above Clause, the learned counsel for the appellant contended that "other things being equal", unmarried women above 40 years and widows may be given priority, but such priority is not available when other things are not equal and in the case on hand, the 4th respondent has other facilities, such as, godown, show-room, working capital, etc. and hence the selection of 4th respondent for dealership cannot be disputed. Therefore, the 4th respondent/appellant herein is in better position and the writ petitioner is not coming within the ambit of the expression "other things being equal". Only where "other things are equal", then, the IOC may give priority to the widow or unmarried women above 40 years in the matter of awarding dealership as referred to in the appropriate Clause. The learned Judge committed an error in making it appear as if when a widow applies, necessarily IOC should appoint her as a Dealer and we are of the view that such interpretation is not sustainable and warranted.

13. Further, the expression "other things being equal" is very significant. We are of the considered opinion that preference or priority could only be granted if other things are equal. In case the writ petitioner was qualified in the interview, and was placed on par with the 4th respondent, having secured equal marks,

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the question of preference or priority would arise. It is brought to our notice that the petitioner was not the only widow, who applied for the Dealership and there were 5 other widows.

14. It is also relevant to point out that, admittedly, the writ petitioner was not one of the short listed candidates. In other words, she was not even secured the minimum marks in the interview and did not figure in the short-list. In such circumstances, inasmuch as the writ petitioner is not one among the short-listed candidates, as rightly pointed out by the learned senior counsel for the appellant, the learned Judge ought not to have considered her claim. The particulars furnished clearly show that the 4th respondent is an Engineering graduate in Instrumentation and Control Engineering from Bharathidasan University, and an unemployed graduate looking for self employment. It is also demonstrated that considering the development potentiality of an Engineering graduate, her performance in the interview, etc., 4th respondent was selected by the Board. It is also highlighted that her technical expertise, age and the fact that she can render good service to the customers were all taken into consideration by the Selection Board while selecting 4th respondent for Dealership. On the other hand, considering age, physical potential and financial dependency, the writ petitioner's case has been rightly rejected by the Board. The records produced by the respondents clearly show that considering all the material aspects for a dealership, viz., age, educational achievements, financial and management capacity, development potentiality, the 4th respondent, viz., N. Manodevi, has been rightly selected. It is also brought to our notice that after selection, she obtained all clearance approvals and completed the commissioning work. On the side of IOC, by way of counter affidavit it is stated that the rejection of the case of writ petitioner for dealership is neither arbitrary nor discriminatory, and on the other hand, the selection of 4th respondent is fair and reasonable and the same was done by the Dealership Selection Board consisting of Experts in the field, and a retired Judge of this Court. All the above mentioned relevant aspects have not been taken note of by the learned Judge and we are satisfied that the learned Judge has committed an error in accepting the case of the writ petitioner. When the selection Board, based on acceptable and relevant materials selected a person suitable for awarding dealership, it is settled law that re-appreciation or re-appraisal of those material factors, and re-evaluation of comparative merits of candidates in writ proceedings are not permissible. We find no valid ground to interfere with the selection of the Dealer Selection Board.

Under these circumstances, the order of the learned Judge dated 14.08.2001 made in W.P.No.4948 of 2001, is set aside. Consequently, all the writ appeals are allowed. No costs.

Sd/-

Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The General Manager (T.N.S.O)
   Marketing Division
   Indian Oil Corporation Ltd.
   Indian Oil Bhavan,No.IV Level
   139 Nungambakkam High Road
   Chennai 600 034.

2. The Senior Area Manager
   Indane Area Office
   2, Race Course Road
   Chokkikulam
   Madurai 625 002.

3. The Marketing Secretary
   The Dealer Selection Board (Marketing)
   2, Chokkikulam Road
   Madurai 625 002.

1 cc to Mr.S.S. Vasudevan, Advoate, sr. 56546

P.D. Common Judgement in
WA.Nos.1858,1859/01 & 1624/02

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